IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE THE ACTING CHIEF JUSTICE BILAL NAZKI

And
THE HON'BLE DR JUSTICE G.YETHIRAJULU

Writ Petition Nos.17171 & 19872 of 1999

Writ Petition No: 17171 of 1999

Between:

1 Kumare Nagesh S/o.Late Narasimha
(Kumare Nagesh rep. by its natural guardian and

mother Smt.Yellamma)
R/o. H.No-8-2-684/32/60,Road No.12, Banjara Hill, Hyderabad
2 Kumare Ramamma S/o. Late Narasimha
(Kumare Ramamma rep. by his natural gauardian and

mother, Smt.Yellamma)
R/o. H.No-8-2-684/32/60,Road No.12, Banjara Hills Hyderabad
3 Kumare Lalitha D/o.Late Narasimha
(Kumare Lalitha rep. by her natural gauardian and

mother Smt.Yellamma)
R/o. H.No-8-2-684/32/60,Road No.12, Banjara Hills, Hyderabad
4 Kumare Yellamma W/o.Late Narasimha, R/o.

H.No-8-2-684-/32/60,Road No.12, Banjara Hills, Hyderabad
5 Kumare Yellaiah S/o.Late Yenkaiah
R/o.H.No 10-4-771/302, Ghandi Nagar, Masab Tank, Hyd.
6 Kumare Chinna Narasimha S/o.Yenkaiah
R/o.H.No 10-4-771/302, Ghandi Nagar, Masab Tank, Hyd.

7 Kumare Durgaiah S/o.Late Yenkaiah
R/o.H.No 10-4-771/302, Ghandi Nagar, Masab Tank, Hyd.
8 Kumare Muthamma W/o.Late Yenkaiah
Kumare Muthamma R/o.H.No 10-4-771/302, Ghandi Nagar,

Masab Tank, Hyd.
9 Yeluma Kotamma d/o.Late Yenkaiah
Kumare Kotamma R/o.H.No.10-4-771/302 Ghandi Nagar,Masab

Tank, Hyd.

.... PETITIONERS

AND

1 Syed Hameed Akber S/o.Late Syed Ali
rep. by Sri Syed Siraj Akbar as Attorney holding the general power
R/o.10-3-282/A/B, Humayun Nagar, Hyderabad
2 Syed Mustafa Akbar S/o.Late Syed Ali Akber
rep. by Sri Syed Siraj Akbar Attorney holding the General Power
R/o.10-3-282/A/B, Humayun Nagar, Hyderabad
3 Mrs .Sabina N.H Jafferi W/o. Syed Noor Ui Hussain Jafferi
rep. by Sri Siraj Akbar as Attorney holding the General Power
R/o.10-3-282/A/B, Humayun Nagar, Hyderabad
4 Mrs.Sajida Mirza W/o.Mirza Abid
rep.by Sri Syed Siraj Akber as Attorney holding the General Power
R/o.10-3-282/A/B, Humayun Nagar, Hyderabad
5 Syed Siraj Akbar S/o.Late Syed Ali Akbar
rep. by Sri Syed Siraj Akbar as Attorney holding General Power
R/o.10-3-282/A/B, Humayun Nagar, Hyderabad
6 The JJ Co-operative Housing Society
rep. by its Secretary B.Lakshmi Pershad S/o.Bala Pershad
5-4-484, Station Road, Nampally, Hyderabad
7 The State of A.P.
through its Collector, Hyderabad District
Hyderabad

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue and order or a direction or a Writ more particularly in the nature of a Writ of Certiorari quashing the Judgment of the Special Court under A.P Land Grabbing Prohibition Act delivered on 12-7-99 passed in LGC No.97/96 on the file of the said Court and pass such order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.P.A.SESHU

Counsel for the Respondents: MR.P.S.MURTHY

Writ Petition No: 19872 of 1999

Between:

1 Syed Hameed Akbar S/o.Late Syed Ali Akbar
Syed Hameed Akbar R/o.10-3-282, Humayun Nagar, Hyderabad
Represented by their G.P.A Syed Siraj Akbar
2 Syed Mustafa Akbar S/o.Late Syed Ali Akbar
Syed Mustafa Akbar R/o.10-3-282, Humayun Nagar, Hyderabad
Represented by their G.P.A Syed Siraj Akbar
3 Mrs.Sabina N.H. Jafferi W/o.Syed Noor Ul Hassan Jafferi
Mrs.Sabina N.H.Jafferi R/o.10-3-282, Humayun Nagar, Hyderabad
Represented by their G.P.A Syed Siraj Akbar
4 Mrs.Sajada Mirza W/o.Mirza Abid
Mrs.Sajada Mirza R/o.10-3-282, Humayun Nagar, Hyderabad
Represented by their G.P.A Syed Siraj Akbar
5 Syed Siraj Akbar S/o.Late Syed Ali Akbar
R/o.10-3-282, Humayun Nagar, Hyderabad Represented by their

G.P.A Syed Siraj Akbar
6 The J.J. Cooperative Housing Society
Represented by its Secretary B.Lakshmi Pershad
S/o.Bala Pershad, 60 yrs R/o.5-4-484,Nampally Road, Hyderabad.

... PETITIONERS

AND

1 Kumare Nagesh S/o.Late Narasimha
R/o.8-2-684/32/60, Road No.12,Banjara Hills,Hyderabad

represented by their mother, Kumare Yellamma.
2 Kumare Ramamma S/o.Late Narasimha
represented bu their mother, Kumare Yellamma R/o.8-2-

684/32/60, Road No.12,Banjara Hills,Hyderabad
3 Kumare Lalitha D/o.Late Narasimha
represented bu their mother, Kumare Yellamma. R/o.8-2-

684/32/60, Road No.12,Banjara Hills,Hyderabad
4 Kumare Yellamma W/o.Late Narasimha
R/o.8-2-684/32/60, Road No.12,Banjara Hills,Hyderabad
5 Kumare Yellaiah S/o.Late Yenkaiah
R/o.10-4-771/302,Ghandi Nagar,Masab Tank, Hyderabad
6 Kumare Chinna Narasimha S/o.Late Yenkaiah
R/o.10-4-771/302,Ghandi Nagar,Masab Tank, Hyderabad
7 Kumare Durgaiah S/o.Late Yenkaiah
R/o.10-4-771/302,Ghandi Nagar,Masab Tank, Hyderabad
8 Kumare Muthamma W/o.Late Yankaiah
R/o.10-4-771/302,Ghandi Nagar,Masab Tank, Hyderabad

9 Yeluma Kotamma D/o.Late Yenkaiah
R/o.10-4-771/302,Ghandi Nagar,Masab Tank, Hyderabad
10 Yemula Bangaramma

(Died hence not necessary party)

11 Sri Kanaka Durga Temple Development Committee
represented by Smt.K.Yellamma W/o.Late Narasimha, 42yrs
R/o.8-2-684/32/60,Road No.12,Banjara Hills,Hyderabad
12 M.Venugopal Naidu S/o.Sri Naidu
R/o.193/2 RT Vijayanagar colony
Hyderabad
13 Special court under A.P Land Grabbing (prohibition) Act.,
2nd floor, B.R.K.R Building, Tank Bund
Hyderabad

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records pertaining to L.G.C No.97 of 1996 and L.G.C No.65 of 1997 on the file of the special Court under A.P Land Grabbing (Prohibition) Act and after pursuing the same, declare the common judgment dated 12-7-1999 of the said Special Court in the said two cases in so far as the findings in favour of the respondents No.11 and 12 in L.G.C. No.97 of 1996 and applicant in L.G.C No.65 of 1997 are concerned as contrary to law and facts and null and void and consequently allow the L.G.C No.97 of 1996 against respondents No.11 and 12 also and dismiss the L.G.C No.65 of 1997 by holding that Sri Kanakadurga Temple Trust Committee has no right title of interest in any part of the L.G.C No.97 of 1996 of one Acre 30 Guntas in S.No129/49 (New S.No.330) corresponding to Town Survey No.9 situate at Banjara Hills, Hyderabad and further direct the special Court under the A.P Land Grabbing (prohibition) Act envisaged in the A.P Land Grabbing (Prohibition) Act against Respondents 4 to 9 in L.G.C No.97 of 1996 by issue of a Writ of Mandamus or any other appropriate Writ order or direction and pass such orders as deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.P.S.MURTHY

Counsel for the Respondent: GP FOR REVENUE

The Court made the following:

Order:(per the Hon'ble Dr.Justice G. Yethirajulu)

1. Since these writ petitions relate to an extent of Ac.1-30 guntas situated in S.No.129/49 (new S.No.330) of Shaikpet Village, Road No.12,

Banjara Hills, Hyderabad and arise out of a common judgment of the Special Court under A.P. Land Grabbing (Prohibition) Act and involve a common question of fact and law, they are clubbed together and this common judgment is delivered.

2. The facts leading to the filing of the writ petitions are briefly as follows:

3. One late Syed Ali Akbar, father of applicants 1 to 5 in L.G.C. No.97 of 1996 was an academician who held high positions in the Nizam's Educational Department. He was the owner of an extent of Ac.4-30 guntas situated in S.No.129/49 (old) of Shaikpet Village, which was granted to him by way of a patta in 1340 Fasli. In the year 1962 he divided the said land into four parts. The area of each of the plots 1 to 3 is one acre land while the area of the fourth plot is Ac.1-30 guntas. He sold away Plot Nos.1 to 3 to one Rani Seth, D. Suryanarayana Swamy and Ram Bhupaul respectively under registered sale-deeds dated 18-10-1962, 22-9-1962 and 10-10-1962 respectively and delivered possession to the vendees. He retained Plot No.4 admeasuring Ac.1-30 guntas for himself. Subsequently, in the year 1981 he sold away Plot No.4 to J.J. Cooperative Housing Society, applicant No.6 in L.G.C.No.97 of 1996, and delivered possession of the land under an agreement of sale. The property in dispute in L.G.C.No.65 of 1996 is a part of Plot No.4 sold by Syed Ali Akbar. The property in dispute in L.G.C.No.97 of 1996 is the entire extent of land covered by Plot No.4 i.e., Ac.1-30 guntas.

Sri Syed Ali Akbar, the original owner of this property is stated to have delivered possession of the land to the society under an agreement of sale obviously to claim exemption under the provisions of the Urban Land Ceiling Act (for short 'the Ceiling Act'). He died in 1984. His three sons, two daughters and the alleged vendee viz., J.J.Cooperative Housing Society have jointly filed O.P.No.351 of 1994 under Sections 7-A and 8 of the A.P. Land Grabbing (Prohibition) Act (for short 'the Act') before the Special Tribunal-cum-Chief Judge, City Civil Court, Hyderabad for an injunction restraining respondents 1 to 12 therein from interfering with

their peaceful possession and enjoyment of the property covered by Plot No.4 and to declare the respondents therein as grabbers of the land and to punish them. The respondents 1 to 10 in O.P.No.351 of 1994 were claiming title and possession in respect of the entire extent of Ac.1-30 guntas covered by Plot No.4. Though the respondents contended that in a compromise partition decree passed in O.S.No.1407 of 1992 on the file of the II Additional Judge, City Civil Court, Hyderabad an extent of 600 sq. yds. in Plot No.4 was set apart to Sri Kanakadurga Temple, represented by the 11th respondent in Writ Petition No.19872 of 1999, the said temple came to be constructed in the said site more than 25 years ago. The 11th respondent—temple filed O.S.No.2979 of 1993 on the file of the IX Assistant Judge, City Civil Court, Hyderabad against the office-bearers of the 6th petitioner—society for permanent injunction restraining them from interfering with the affairs of the temple from possession of the said site of 600 sq. yds. of land. Since the connected matters relating to S.No.129/49 are pending in the Special Court under A.P. Land Grabbing (Prohibition) Act, Hyderabad, all the connected matters were also transferred to the Special Court. O.P.No.351 of 1994 pending before the Special Tribunal-cum-Chief Judge, City Civil Court, Hyderabad was transferred and numbered as L.G.C.No.97 of 1996. O.S.No.2979 of 1993 pending adjudication before the IX Assistant Judge, City Civil Court, Hyderabad was transferred and numbered as L.G.C.No.65 of 1997.

4. Though the Special Court delivered a common judgment in L.G.C.Nos.114, 115, 116, 258 of 1995, 97 of 1996 and 65 of 1997, the present writ petitions relate to the dispute in L.G.C.No.97 of 1996 and L.G.C.No.65 of 1997 only. Therefore, we are not concerned with the land covered by the other cases.

5. As already stated supra, the applicant—temple in L.G.C.No.65 of 1997 claims ownership of an extent of 600 sq. yds of land in Plot No.4 of S.No.129/49 (old) viz., Ac.1-30 guntas whereas the legal heirs of Syed

Akbar Ali viz., applicants 1 to 5 in L.G.C.No.97 of 1996 contend that their father sold the entire extent of Plot No.4 viz., Ac.1-30 guntas of land to the 6th applicant—society in L.G.C.No.97 of 1996 under an agreement of sale. On behalf the temple it was pleaded that Sri Syed Ali Akbar filed declarations under the Ceiling Act and the urban land ceiling authorities have determined that the extent covered by Plot No.4 i.e., Ac.1-30 guntas of land as surplus land and hence it stood vested in the government and as such Sri Syed Ali Akbar has no right to sell it to the society in 1981 under an agreement of sale and that the applicants in L.G.C.No.97 of 1996 have no locus standi to file the said case. Since no exemption was granted by the urban land ceiling authorities or the government, the alleged sale agreement in favour of the society said to have been executed by Syed Ali Akbar is void.

6. The State of Andhra Pradesh claimed that the disputed land covered by an extent of Ac.1-30 guntas is a government land, therefore, neither the applicants nor the respondents have any right over the said land.

7. The Special Court after taking into consideration the contentions of the respective parties, settled the following issues for enquiry in L.G.C.No.97 of 1996:

1. Whether the petition is not maintainable before this Court (Special Tribunal) and whether this court has jurisdiction to entertain this petition?

2. Whether the petitioners are the owners of the petition schedule property and whether the respondents have a right to grab the said property unauthorisedly?

3. Whether the respondents have been in lawful possession of the petition schedule land?

4. To what relief?

Additional Issue:

Whether the first respondent and his predecessor-in-title perfected their title by adverse possession?

8. The case of the applicant—temple in L.G.C. No.65 of 1997 is that one K. Venkaiah who was the owner and possessor of an extent of Ac.1-30 guntas of land situated in S.No.129/49 of Shaikpet Village constructed Sri Kanaka Durga Temple in a portion of the said land. After the death of the said Venkaiah, his children partitioned the said extent of Ac.1-30 guntas under a compromise partition decree made in O.S.No.1407 of 1992 on the file of the II Additional Judge, City Civil Court, Hyderabad. Under the said partition decree, the parties have divided the balance extent of Ac.1-30 guntas of land after setting apart 600 sq. yds. of land for the said temple. A full-fledged temple has been in existence in the said extent of 600 sq. yds. of land and certain persons claiming themselves to be the office-bearers of J.J. Cooperative Housing Society have made attempts to demolish the temple and grab away the land earmarked for the temple. Therefore, the temple filed O.S.No.2979 of 1993 before the IX Assistant Judge, City Civil Court, Hyderabad for a perpetual injunction restraining the office-bearers of the society and their men from interfering with the temple's peaceful possession of an extent of 600 sq. yds. of land out of the extent of

Ac.1-30 guntas of land.

9. The respondents in L.G.C.No.65 of 1997 contended that by the date of filing the suit, the temple was in existence in the said land, that the alleged temple is the creation of land grabbers to grab the land that was already sold by Syed Ali Akbar to J.J. Cooperative Housing Society under an agreement of sale dated 22-7-1981 and that the alleged Trust Board of the temple is neither valid nor entitled to maintain the suit.

10. The Special Court by considering the averments made by the respective parties framed the following issues in L.G.C.No.65 of 1997:

> 5. Whether the temple is entitled to permanent injunction as prayed for against the respondents therein, who are the office-bearers of J.J. Cooperative Housing Society in an extent of 600 sq. yds., which is part of Ac.1-30 guntas of land in S.No.129/49?
>
> 6. To what relief?

11. The Special Court conducted joint trial in all the cases and recorded common evidence in L.G.C.No.114 of 1995. The Special Court after considering the evidence and the arguments advanced by the respective counsel delivered a common judgment on 12-7-1999.

12. Insofar as the dispute in L.G.C.Nos.97 of 1996 and 65 of 1997 is concerned, the findings recorded by the Special Court are as follows:

> 7. The Special Tribunal heard issue No.1 as preliminary issue and decided it as per the directions of the High Court in C.R.P.No.3149 of 1994 in favour of the applicants by its order dated 11-7-1995 holding that the Special Tribunal has jurisdiction to entertain this petition. The said finding was confirmed by the High Court by its order dated 27-2-1996 made in C.R.P.No.2978 of 1996 as seen from the docket entry dated 24-11-1997 in L.G.C.No.97 of 1996. Hence, we need not go into issue No.1 once again, since it has already been decided in favour of the applicants.
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> 8. The applicants 1 to 5 are the legal heirs of Syed Ali Akbar, who was the original owner of the land of an extent of Ac.1-30 guntas in S.No.129/49 of Shaikpet Village covered by the application schedule. The applicants 1 to 5 are still the owners of the said property since no registered sale-deed was executed in favour of the 6th applicant—society, which is in possession of the said property (except an extent of 600 sq. yds.) in pursuance of Ex.A.74(A)—agreement of sale obtained from it by late Syed Ali Akbar and that the possession and ownership of the said property of the applicants in L.G.C. No.97 of 1996 is subject to the decision of the urban land ceiling authorities regarding the determination of the surplus land of Syed Ali Akbar, and the decision of the government to grant or refuse exemption to this land from the provisions of the Urban Land Ceiling Act and that the respondents have no right to grab or attempt to grab the said land.
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> 9. The respondents 1 to 9 in L.G.C.No.97 of 1996 were never in possession of any portion of the application schedule extent of Ac.1-30 guntas covered by Plot No.4 and as

such the question of they being in lawful possession of the application schedule property does not arise and that Sri Kanaka Durga Temple represented by R.11 and R.12 is in possession of an extent of 600 sq. yds. out of Ac.1-30 guntas of land in S.No.129/49 as mentioned in the schedule appended to L.G.C.No.65 of 1997.

10. The first respondent in L.G.C.No.97 of 1996 did not take any plea of adverse possession and did not adduce any proof of it and as such, the question of the first respondent and his predecessors in title perfecting title by adverse possession to the schedule property does not arise.

11. Sri Kanaka Durga Temple, the applicant in L.G.C.No.65 of 1997, which is in settled peaceful possession of the application schedule extent of 600 sq. yds. out of Ac.1-30 guntas in S.No.129/49 is entitled to be in possession of the said property till such time it is lawfully evicted therefrom through legally constituted suit or action to be successfully initiated against it and in the meanwhile the applicant temple is entitled to a perpetual injunction against the respondents till such time it is lawfully evicted.

13. Aggrieved by the judgment of the Special Court, the respondent Nos.1 to 9 in L.G.C.No.97 of 1996 filed Writ Petition No.17171 of 1999 seeking to issue a writ of Certiorari and to pass an order quashing the common judgment of the Special Court dated 12-7-1999 in L.G.C.Nos.114, 115, 116, 258 of 1995, 97 of 1996 and 65 of 1997 insofar as it relates to L.G.C.No.97 of 1996.

14. The applicants in L.G.C.No.97 of 1996 filed Writ Petition No.19872 of 1999 seeking to issue a writ of mandamus declaring the findings of the Special Court in favour of respondent Nos.11 and 12 in L.G.C.No.97 of 1996 in the common judgment dated 12-7-1999 as 1) null and void and contrary to law and facts, 2) to dismiss L.G.C.No.65 of 1997 filed by respondent No.11—Sri Kanakadurga Temple in L.G.C.No.97 of 1996 by holding that the temple and the Trust Committee of the temple have no right, title or interest in any part of the schedule property of L.G.C.No.97

of 1996 to the extent of Ac.1-30 guntas in S.No.129/49 (new Survey No.330) corresponding to Town Survey No.9 situated at Banjara Hills, Hyderabad, and 3) to direct the Special Court to initiate criminal prosecution under the Act against respondent Nos.4 to 9 in L.G.C.No.97 of 1996.

15. In the light of the contentions of the respective parties, and in the light of the judgment of the Special Court, the following are the points for consideration by this Court:

12. Whether the findings of the Special Court in favour of respondents 11 and 12 in L.G.C.No.97 of 1996 are contrary to law and whether the order of the Special Court granting perpetual injunction in favour of respondents 11 and 12 is liable to be set aside and consequently whether L.G.C.No.65 of 1997 is liable to be dismissed holding that Sri Kanaka Durga Temple has no right, title or interest in an extent of 600 sq. yds. of land, which is a part of Ac.1-30 guntas of land in S.No.129/49?

13. Whether the order of the Special Court in L.G.C.No.97 of 1996 dated 12-7-1999 is liable to be quashed?

Points:

16. In the earlier civil litigation the respondents 1 to 10 took a stand that one Mohd. Ghousuddin purchased an extent of Ac.1-30 guntas covered by Plot No.4 from Syed Ali Akbar under an agreement of sale in the year 1965 and subsequently the said Ghousuddin transferred his rights in favour of Sri K. Venkaiah, the ancestor of respondents 1 to 10 on 28-9-1965 and delivered possession of the land to him. Subsequently after the death of the said Venkaiah, respondents 1 to 10 being the sons and daughters of the said Venkaiah have been in possession and enjoyment of the said land.

17. In this case, respondents 1 to 10 did not file any separate counter claiming any right or interest in any portion of Ac.1-30 guntas of land. They filed a Memo adopting the counter filed by respondent No.12. The 12th respondent took a plea that the urban land ceiling authorities have determined the extent of Ac.1-30 guntas as surplus holding of Syed Ali Akbar and as such the land stood vested with the government, therefore, the legal representatives of Syed Ali Akbar or his vendee cannot claim any right in the said land. The respondents 1 to 10 did not take the abovementioned plea while adopting the counter of respondent No.12. None of the respondents 1 to 10 were examined to prove their title or possession on any portion of Ac.1-30 guntas of land.

18. The Special Deputy Collector, Land Protection, who was examined as R.W.8 conceded that various documents covered by Exs.B.5 to B.36 reflected the name of Sri Syed Ali Akbar as pattadar of R.S.No.330 corresponding to old S.No.129/49. He further admitted that in Ex.A.66—Town Survey Land Register the name of Syed Ali Akbar is shown as registered holder of the land covered by S.No.129/49. The entries in Ex.A.40 to A.52—certified copies of pahanies also reflected the name of Sri Syed Ali Akbar as pattadar of the land. The evidence placed by petitioners amply established that the land in question is a patta land and it stood in the name of Syed Ali Akbar. The other relevant documents placed before the Special Court also established that the land in question is a patta land and it stood in the name of Syed Ali Akbar and it does not belong to the government.

19. The respondents 1 to 9 contended that in the year 1965 one Mohd. Ghousuddin purchased an extent of Ac.1-30 guntas under an agreement of sale and subsequently the said Ghousuddin with the consent of Syed Ali Akbar transferred his rights in favour of Sri K. Venkaiah, the ancestor of respondents 1 to 9; later the property was divided among them after partition suit by leaving 600 sq. yds. to respondent No.11—temple.

20. The fifth petitioner who was examined as P.W.6 stated that his

father late Syed Ali Akbar studied in Cambridge University, England and worked as the Principal of Nizam College for a long time and subsequently retired as a Director of Education in the erstwhile Hyderabad State in 1947. Even after retirement he worked as the Principal of Anwar-Ul-Uloom College for a long time. He produced Ex.A.32 of 1340 Fasli along with Ex.A.33—English translation, which is a notice issued by the first Taluqdar of Atraf Balda District calling upon Syed Ali Akbar to pay the land revenue for one year @ Rs.5/- per acre and also to pay Rs.50/- per acre towards possessory right for granting patta in an extent of Ac.4-30 guntas in S.No.129/49 of Shaikpet Village. Ex.A.34 is a Pouthi Book issued in the name of Syed Ali Akbar, Ex.A.35 is an entry in the Pouthi Book regarding the payment of Rs.237-0-8 ps. in 1342 Fasli by Syed Ali Akbar in respect of the same land. Ex.A.37—entry also reflected that Syed Ali Akbar paid land revenue of Rs.25-3-9 ps. for 1344 Fasli in respect of his patta land. In Ex.A.39 to A.52—certified copies of pahanis relating to the years 1960-61 to 1979-80 are also showing Syed Ali Akbar as the owner and pattadar of the entire extent. The entries in the above mentioned documents and the evidence of P.W.6 established that Sri Syed Ali Akbar was in possession and enjoyment of the property and he was the pattadar of the land.

21. The evidence of P.W.6 further disclosed that Syed Ali Akbar sold away Plot Nos.1 to 3 to third parties and retained Plot No.4 admeasuring Ac.1-30 guntas. The petitioners could also establish that O.S.No.2570 of 1980 filed by the father of respondents 1 to 3 on the file of the IX Assistant Judge, City Civil Court, Hyderabad against Syed Ali Akbar for perpetual injunction in respect of the entire extent of Ac.4-30 guntas claiming that he was in possession and enjoyment of the entire extent having inherited the same from his father K.Venkaiah was dismissed by holding that Sri Syed Ali Akbar is the owner of the said land and that the father of respondents 1 to 3 have no manner of right, title or interest in the said land. The petitioners also filed the certified copy of the said judgment covered by Ex.A.1 in support of their contention regarding the dismissal of the suit. The petitioners also filed Ex.A.61—certified copy of the judgment in

C.C.No.31 of 1982 filed against Sri K. Narsimha, father of respondents 1 to 3, for the offences punishable under Sections 447 and 379 IPC to show that the said Narsimha was found guilty for the offence under Section 447 IPC and he was released after due admonition under Section 3 of the Probation of Offenders Act. The Special Court after taking into consideration the overwhelming oral and documentary evidence rightly held that Syed Ali Akbar was the pattadar and possessor of the land in question and he continued to protect his possession till he died in 1984.

22. Sri Syed Ali Akbar also filed Ex.A.56—declaration in 1976 under the Urban Land Ceiling Act declaring the land in question also as forming part of his vacant land. Ex.A.57—order dated 17-4-1982 of the urban land ceiling authorities is disclosing that the authorities under the Ceiling Act declared an extent of Ac.1-30 guntas of Syed Ali Akbar as surplus land under Section 8 (4) of the said Act.

23. Regarding the plea of the respondents that Sri K. Venkaiah purchased the land in question from Sri Syed Ali Akbar through one Ghousuddin, the Special Court observed that the respondents 1 to 10 did not file any separate counter stating that they are the owners of the schedule land by virtue of the sale agreement obtained by their ancestor —K.Venkaiah, from Syed Ali Akbar. No one from the family of the deceased Venkaiah was examined to speak about those facts. When R.W.10, who is said to be the trustee of respondent No.11-temple produced Ex.B.45—agreement said to be executed by Syed Ali Akbar in favour of Sri Ghousuddin, the Special Court categorically observed that R.W.10 is no way connected with the said agreement and nobody connected to the said agreement was examined to prove that it was executed by Sri Syed Ali Akbar in favour of Ghousuddin in the year 1965.

24. The Special Court after taking into consideration the evidence placed by the respondents regarding the genuineness of Ex.B.45—agreement held that it is not possible to place any reliance on Ex.B.45 which was introduced through the evidence of R.W.10 and gave a

categorical finding that Sri K. Narsimha, the father of respondents 1 to 3, has nothing to do with the land in question. The Special Court also observed that the compromise partition final decree passed by the II Additional Judge, City Civil Court, Hyderabad in O.S.No.1407 of 1982 is not binding on the petitioners since it was passed behind their back without impleading them as parties to the said suit. The Special Court further observed that the circumstances under which the partition suit came to be filed and partition final decree came to be passed clearly go to show that the partition decree is a collusive one brought into existence to grab Ac.1-30 guntas of land belonging to third parties and the said compromise decree is only intended to give a garb of legality for the attempt to grab the land of others. Hence, it cannot bind the real owners of the application schedule land.

25. After carefully going through the material available on record, we have no hesitation to concur with the above views expressed by the Special Court.

26. The evidence of P.W.6 disclosed that Syed Ali Akbar filed a declaration covered by Ex.A.56 on 12-8-1976 under the provisions of the Ceiling Act in respect of his lands, including the extent of Ac.1-30 guntas covered by Plot No.4. The land ceiling authorities determined the surplus holding of Syed Ali Akbar at 7082 sq. mtrs. as per Ex.A.57—order dated 17-4-1982, therefore, the entire extent of

Ac.1-30 guntas was held to be surplus extent under the provisions of the Ceiling Act. Against the said order covered by Ex.A.57 passed by the land ceiling authorities under Section 8 (1) of the Act, the petitioners 1 to 5 being the legal heirs of Syed Ali Akbar filed an appeal before the Commissioner of Land Reforms, Urban Land Ceilings stating that no opportunity of being heard was given to the persons interested in the land in question, though the names of the interested persons were disclosed in the declaration filed by Syed Ali Akbar. The appellate authority through Ex.A.68 order dated 5-12-1996 allowed the appeal and remanded the matter to the Special Officer and competent authority under the Ceiling

Act for a de nova enquiry after giving opportunity to petitioners 1 to 5 and to pass revised orders under Sections 8 (4) and 9 of the Ceiling Act. P.W.6 and R.W.9 stated that the competent authority did not so far pass any final orders and the enquiry is still pending.

27. In the year 1993 the petitioners 1 to 5 and the housing society filed W.P.No.17764 of 1993 on the file of this Court to direct the government to grant exemption in respect of an extent of 7082 sq.mtrs. of land situated in S.No.129/49 to enable the surplus holder i.e., the legal heirs of Syed Ali Akbar to alienate the same to the housing society in terms of G.O.Ms.No.136, Revenue dated 28-1-1981. The High Court by its order dated 18-11-1996 (Ex.A.67) issued a direction to the State Government to reconsider the application filed by the petitioners 1 to 6 under Section 23 (1)(a) and (b) of the Ceiling Act and pass appropriate orders in accordance with law and the said matter is still pending with the government. Unless the surplus extent in S.No.129/49 is determined, the granting of exemption may not arise. The Special Court by taking into consideration the above circumstances observed that the extent of Ac.1-30 guntas situated in S.No.129/49 cannot be said to be the surplus holding vested in the government and unless the surplus is determined under the provisions of the Ceiling Act and the surplus extent is surrendered by the declarant to the government, the declarant who is in possession of the land continues to be the owner and he is entitled to safeguard his possession. The Special Court further observed that it is not open to third party trespassers to question the title of the declarant at this stage and in the case of urban land ceiling authorities determining the surplus, it is always open to the government to take the surplus extent. After going through the record, we are convinced that the Special Court rightly concluded that till the time of determination of surplus extent, the declarant cannot be disturbed either by the government or by any third party or trespassers.

28. So far as Ex.A.74(a)—agreement between Syed Ali Akbar and the

6th petitioner is concerned, the Special Court observed that there is no dispute regarding the genuineness of the said agreement between the vendor and the vendee, therefore, it is not open to a third party trespasser to question the genuineness of the said agreement. The respondents who have not taken any specific plea in their counter-affidavit regarding the genuineness of the said agreement cannot raise the said point without there being a pleading. Therefore, it is for the government to consider whether the 6th petitioner is a bona fide housing society constituted to allot plots to its members having no houses of their own and consider whether it is a fit case for grant of exemption or not and it is all within the discretion of the government, which is not directly an issue in this matter.

29. Regarding the existence of the temple in an extent of 600 sq. yds., out of the extent of Ac.1-30 guntas of land, R.W.10, an Adocate who is said to be the Managing Trustee of the 11th respondent temple deposed that the temple has been in possession of an extent of 600 sq. yds. in S.No.129/49. He further stated that to his knowledge since 1992 a full-fledged temple with a compound wall has been in existence in the site in question and that the said temple is in existence since long time.

30. The development committee of the temple appeared to have addressed a letter to the Commissioner of Endowments, Hyderabad on 24-2-1993 to supply one stone vigraham of Kanakadurga Deity for installation in the said temple. The Commissioner of Endowments sent a communication covered by Ex.A.58 dated 16-3-1993 to respondent No.11 —temple stating that the cost of the stone vigraham is Rs.19,800/- and that an advance of Rs.9,900/- may be sent by way of a demand draft for supplying the same. The development committee also addressed a letter to the Principal Chief Conservator of Forests, Hyderabad for supply of wooden log of 36 ft. height for Dwaja Sthambham of the temple and in that connection the Forest Department sent Ex.B.59—reply to respondent No.11—temple regarding the availability of the wooden log. In Ex.A.1—certified copy of the judgment in O.S.No.2570 of 1980 at para No.19 it is

mentioned about the evidence of P.W.3—Rajab Ali. The said witness appeared to have stated that as long back as in 1982 one room and one temple have been in existence in the land in question. P.W.4 also in his cross-examination stated that a temple came into existence between 1985 and 1990 on the land in question.

31. Respondent No.11—Sri Kanakadurga Temple filed O.S.No.2979 of 1983 on the file of the IX Assistant Judge, City Civil Court, Hyderabad for perpetual injunction in respect of 600 sq. yds. of land against the office bearers of J.J. Cooperative Housing Society on the ground that they are trying to interfere with the possession of the temple and obtained ex parte interim injunction and the said suit was subsequently transferred to the Special Court and was numbered as L.G.C.No.65 of 1997. In Ex.X.2—sketch enclosed to Ex.X.1—report of the Mandal Revenue Officer, the existence of the temple has been indicated. The Special Court by taking into consideration the above material on record held that the temple is located in an extent of 600 sq. yds. from out of the total extent of the land in question. The Special Court further observed that by its very nature of things a temple represented by a Deity cannot be said to be a land grabber. The issue whether the applicants in L.G.C.No.97 of 1996 are entitled to recover possession of the said extent of 600 sq. yds. from the temple can be decided only in a properly constituted suit or other proceedings to be initiated by them against the temple for the recovery of possession of the said extent of 600 sq. yds. of land. After carefully going through the material available on record and the findings of the Special Court, we do not find any grounds to interfere with the findings of the Special Court on the above mentioned aspects.

32. Regarding the maintainability of the case before the Special Court, the learned counsel for the respondents submitted that as the relief sought for is only for permanent injunction, the petition cannot be maintained in the light of the judgment of a Larger Bench of this Court in **Hindustan Aeronautics Employees Co-op. Housing Society Ltd., Hyderabad v. Special Court Constituted under A.P. Land Grabbing (Prohibition)**

Act, 1982 and others, therefore, requested to allow Writ Petition No.17171 of 1999 by holding that L.G.C.No.97 of1996 cannot be maintained.

33. In the above decision, a Larger Bench of this High Court held as follows:

> An attempt to grab land cannot be treated as an act of land grabbing, as defined under Section 2 (e) of the Act, and that the Special Court or Special Tribunal constituted thereunder do not have jurisdiction to entertain matters based on the allegations of attempts to grab the land."

34. This is not a simple case of allegation of attempt to occupy the land. Much water had flown prior to the present litigation. Both parties to the earlier proceedings were asserting title as well as possession over the disputed land and the respondents' predecessor was also convicted for the offence of criminal trespass and the parties in the present proceedings have brought all those circumstances. In the light of the facts and circumstances of the present proceedings, the above judgment of the Larger Bench is not applicable to this case. The issues framed by the Special Court also indicate that this is not a case for injunction simplicitor. Hence, we do not find any force in the contention of the writ petitioners regarding the maintainability of the case before the Special Court.

35. Thus, by taking into consideration the totality of the circumstances and the findings given by the Special Court, we find no grounds to interfere with the judgment of the Special Court under A.P. Land Grabbing (Prohibition) Act, Hyderabad dated 12-7-1999 insofar as it relates to the subject matter in L.G.C.No.97 of 1996 and L.G.C.No.65 of 1997.

36. In the result, Writ Petition Nos.17171 and 19872 of 1999 fail and they are dismissed. Each party to bear its own costs.

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(Bilal Nazki, ACJ)

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(Dr.G.Yethirajulu, J)

10th June 2005.

svs

ASSISTANT REGISTRAR

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SECTION OFFICER

To

1) The District Collector, Hyderabad District
   Hyderabad.

2) 2 CD copies

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